505 Sansome Street
Suite 900
San Francisco
California 94111

GOODIN, MACBRIDE,
SQUERI, SCHLOTZ & RITCHIE

Attorneys at Law

Telephone
415/392-7900
Facsimile
415/398-4321

June 28, 1996

DOCKET FILE COPY ORIGINAL

VIA FEDERAL EXPRESS

Office of the Secretary
Federa Communications Commission
Washington, D.C. 20554

Re: Comments of the California Association of Long Distance Telephone Companies

Dear Sir or Madam:

Enclosed please find an original and 15 copies of the above-referenced document; and a copy of it on diskette.

Please file-stamp the extra copy and return it in the self-addressed stamped envelope which has been provided. Also, please provide copies to each of the Commissioners.

Should you need additional copies or have any questions with respect to this filing, please telephone Kathryn Fugere at (415) 392-7900.

Thank you.

Very truly yours,

GOODIN, MACBRIDE,
SQUERI, SCHLOTZ & RITCHIE, LLP

By J Castillo
Jocelyn Castillo
Secretary to Kathryn A. Fugere

Enclosures

cc: Common Carrier Bureau

0+1

CALTEL
June 28, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	CC Docket No. 96-128
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	
	)	

COMMENTS OF THE CALIFORNIA
ASSOCIATION OF LONG DISTANCE TELEPHONE COMPANIES

GOODIN, MACBRIDE, SQUERI,
SCHLOTZ & RITCHIE, LLP
Thomas J. MacBride, Jr.
Kathryn A. Fugere
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321

Attorneys for the CALIFORNIA
ASSOCIATION OF LONG DISTANCE
TELEPHONE COMPANIES

Dated: June 28, 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	CC Docket No. 96-128
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996	)	
	)	

COMMENTS OF THE CALIFORNIA ASSOCIATION OF LONG DISTANCE TELEPHONE COMPANIES

The California Association of Long Distance Telephone Companies ("CALTEL"),[1] by its undersigned counsel, respond to and comment on the Commission's June 4, 1996, Notice of Proposed Rulemaking ("NPRM"), FCC 96-128, in the above-captioned proceeding. CALTEL's comments are limited to the following sections of the NPRM: (1) II.2.b: Entities Required to Track Calls from Payphones); (2) II.2.c: Ability of Carriers to Track Calls from Payphones; and (3) II.2.d: Administration of Per-Call Compensation.

[1]CALTEL is an association of approximately thirty interexchange and competitive local exchange carriers who provide telecommunications services in California pursuant to authority granted by the California Public Utilities Commission and this Commission.

I. SUMMARY OF COMMENTS

As set forth in detail below, CALTEL believes that the Commission can best minimize transaction costs on the caller and on the industry by adopting a per call compensation "carrier pays" mechanism which requires that the local exchange carrier ("LEC") track all eligible calls from payphones and bill the LEC's access customer. The access customer, in turn, can decide how to best recoup its costs. Finally, should the Commission adopt a "carrier pays" mechanism, it should expressly preempt any state set use fees.

CALTEL further believes that the Commission will not minimize transaction costs on the caller and on the industry if it adopts a set use fee. A set use fee is administratively burdensome, potentially misleading and unfairly impacts smaller interexchange carriers ("IXCs").

II. BACKGROUND

CALTEL's comments are predicated on facts arising out of the development of the set use fee currently being implemented in California for all intraLATA non-sent paid calls, excluding debit-card, 950-XXXX and subscriber 800 calls. The NPRM references Resolution No. T-15782 of the California Public Utilities Commission ("CPUC") as an example of a state-mandated set use fee. While the reference is technically correct, it does not tell the entire story.

First, only AT&T, MCI and Sprint are currently required to bill and collect the $.25 set use fee from end users and remit it to payphone providers (minus a processing fee). The CPUC exempted all IXCs carrying less than 3% of the intraLATA non-sent paid traffic because it determined that, given the existing call tracking technology and potential burdens associated with billing and collection systems, such obligations would work an undue hardship upon smaller IXCs. CPUC Resolution No. T-15782, mimeo, p. 8 (March 13, 1996). Second, CALTEL is informed and believes that neither MCI nor Sprint are currently undertaking the billing and collection obligations set forth in CPUC Resolution No. T-15782 because a controversy exists, inter alia, over the appropriate processing fee to be charged by the IXCs to reflect the billing modifications required by the set use fee and other aspects of the billing and collection relationship between the IXCs and the payphone providers.[2]

Thus, any reliance by the Commission on the existence of PSSC fee in California to support the implementation of set use fee may be misplaced. Currently, only one carrier is billing and collecting the set use fee from end users and remitting it to payphone owners: AT&T

III. THE COMMISSION MUST ADOPT A PER CALL COMPENSATION SCHEME WHICH WILL NOT INCREASE THE TRANSACTION COSTS ON THE CALLER AND ON THE INDUSTRY.

By enacting § 276(b)(1)(A) Congress determined that payphone providers are entitled to fair compensation for each and every completed intrastate and interstate call using their payphones. The Commission, however, should adopt regulations that meet the requirements of § 276(a)(1)(A) without placing undue hardships upon IXCs and end users. As set forth below, a "carrier pays" mechanism tracked by LECs and billed to the access customers will be achieve a workable balance between IXCs, payphone providers and end users.

[2]On April 12, 1996, both MCI and Sprint filed a Motion to Stay Resolution No. T-15782. CALTEL and MCI each filed Applications for Rehearing of Resolution No. T-15782 on this same date. As of the date of this filing, the CPUC has not taken any action on any of these pleadings.

A. A "carrier pays" mechanism which requires that the local exchange carrier track all eligible calls from payphones and bill the access customer is the most efficient manner through which payphone providers will be fairly compensated for each and every completed intrastate and interstate call using their payphones.

CALTEL supports the Commission's tentative conclusion that the "carrier pays" mechanism described in ¶¶ 25 and 28 of the NPRM is preferable to a set use fee described in ¶ 27 of the NPRM because it allows the IXC to aggregate payments to payphone providers rather than individually bill end users.[3] CALTEL does not support, however, a "carrier pays" mechanism which will require each IXC to negotiate a direct billing arrangement with each payphone provider. Moreover, CALTEL does not support a "carrier pays" mechanism which will require IXCs to track calls from payphones. Both aspects will increase transaction costs on the industry, particularly upon smaller IXCs and the end user.

A per call compensation mechanism which requires each individual IXC to negotiate with each payphone provider, or even groups of payphone providers will be cumbersome and expensive. This is particularly true as applied to small carriers (the large majority of the members of CALTEL) whose codes can be used anywhere throughout the United States. While the proposed direct-billing arrangement may work well for the largest carriers who operate on a nationwide basis, it will not work well for smaller carriers who only market to certain regions or states.

In addition, and as the Commission and the CPUC have recognized, there remain numerous technological barriers to the ability of IXCs to track calls from payphones

---

[3]Requiring that the set use fee be billed to the end user is potentially misleading, as most end users would mistakenly attribute the source of the charge to the IXC, and not the payphone provider.

which would be eligible for compensation.[4] The least burdensome alternative method would require the LEC, which already performs this function, to track calls from payphones and then bill its access customers, IXCs already billed by the LEC. The LEC would complete the process by remitting payment to the payphone providers. The access customer would determine how best to recoup the compensation charges This alternative builds upon existing technologies and would not require IXCs to implement costly tracking mechanisms, which, in the case of a small carrier, could never pay for itself. Moreover, billing the access customer will further decrease transaction costs and potential end user confusion.

Finally, as is explicitly set forth in § 276, any inconsistent state regulations governing per call compensation are preempted. In the event the Commission adopts a "carrier pays" mechanism, CALTEL requests that the Commission expressly preempt any and all existing state per call compensation schemes In California, the existing per call compensation scheme applies only to intraLATA calls and requires AT&T, MCI and Sprint[5] to track, bill and collect from end users, and remit to the payphone provider, a $.25 charge (less an undetermined processing fee) for each eligible payphone call. This process clearly conflicts with a "carrier pays" mechanism which does not require the IXCS to directly bill the end user, and may not require the IXC to track the applicable calls.

---

[4]See CPUC Resolution No. T-15782, mimeo, p. 8; NPRM, ¶ 30.

[5]While all other IXCs are currently exempted from the CPUC's per call compensation requirements, Resolution No. T-15782 states the CPUC's intention to periodically determine whether the exemptions are still necessary CPUC Resolution No. T-15782, mimeo, p. 8.

B. The adoption of a set use fee will cause significant hardships for smaller IXCs.

Section 276(a)(1)(A) requires that payphone providers receive compensation for "each and every completed intrastate and interstate call using their payphones." As a result, the Commission may be precluded from adopting, as it did with dial-around compensation, a compensation scheme which exempts smaller IXCs from payment obligations. Therefore, is it vital that the compensation scheme ultimately adopted does not unduly burden smaller carriers.

As explained above, the CPUC has recognized that most IXCs simply cannot afford to implement the costly set use fee -- even on an intrastate, intraLATA basis. This undesirable result would be magnified many times should smaller IXCs be required to implement a set use fee on a nationwide basis A set use fee may ensure that the mandate of § 276(a)(1)(A) is achieved, but a tremendous cost to competition among the IXCs.

IV. CONCLUSION

The Commission can best achieve the goal of "fair compensation" to payphone providers without unduly burdening IXCs by adopting a "carrier pays" per call compensation mechanism which requires LECs to track, and subsequently bill access customers for eligible calls. A set use fee mechanism, on the other hand, achieves "fair compensation" at tremendous costs to IXCs and end users and should not be adopted.

Respectfully submitted this 28th day of June, 1996, at San Francisco, California.

GOODIN, MACBRIDE,
SQUERI, SCHLOTZ & RITCHIE, LLP
Thomas J. MacBride, Jr.
Kathryn A. Fugere
505 Sansome Street, Suite 900
San Francisco, California 94111
Telephone: (415) 392-7900
Facsimile: (415) 398-4321

By
Kathryn A. Fugere

Attorneys for THE CALIFORNIA
ASSOCIATION OF LONG DISTANCE
TELEPHONE COMPANIES

0364\046
PJ2621.CMT